

# EXHIBIT 1

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

PAULA WALLRICH, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. ) No. 22 CV 05506  
 )  
 SAMSUNG ELECTRONICS AMERICA, )  
 INC., et al., ) Chicago, Illinois  
 ) October 19, 2022  
 Defendants. ) 9:18 a.m.

TRANSCRIPT OF TELEPHONIC PROCEEDINGS  
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES TELEPHONICALLY:

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1 (Proceedings heard telephonically:)

2 THE CLERK: 22 C 5506, Wallrich versus Samsung.

3 MR. BOYLE: Good morning, your Honor. This is Mark  
4 Boyle on behalf of Samsung Electronics America, Inc., and  
5 Samsung Electronics Company, Limited, the respondents in the  
6 case.

7 MR. EDWARDS: Good morning, your Honor. Randall  
8 Edwards from O'Melveny & Meyers also representing both Samsung  
9 entities. And on the line is also Michael McTigue of Skadden  
10 Arps who has filed a pro hac vice application in this matter  
11 representing Samsung as well.

12 MS. NAFASH: Good morning, your Honor. This is  
13 Melissa Nafash on behalf of petitioners.

14 THE COURT: Okay. This is a motion to compel  
15 arbitration. Does Samsung acknowledge that they need to  
16 arbitrate?

17 MR. EDWARDS: Your Honor, this is Randall Edwards.  
18 We have both procedural and substantive objections to the  
19 motion and to the petition. I think it will be a highly  
20 contested motion, and so what we're hoping to do today is to  
21 identify an appropriate briefing schedule for the motion.

22 THE COURT: What --

23 MR. EDWARDS: What we --

24 THE COURT: Excuse me. Go ahead.

25 MR. EDWARDS: Oh, I'm sorry. So, your Honor, we on

1   behalf of both entities signed waivers of service earlier this  
2   week that petitioners had provided to us. Samsung Electronics  
3   Company is a non-U.S. entity, and so had we not signed the  
4   waiver of service, they would have to have been served under  
5   the Hague Convention which would have taken a long time.

6               Under the waivers of service, that would have  
7   provided 60 days for Samsung Electronics America and 90 days  
8   for Samsung Electronics Company to respond to a complaint. We  
9   believe that the appropriate thing to do is to align the  
10   response to this motion. And we would request that that be  
11   set for our opposition 90 days from the date of service, which  
12   would be -- or 90 days from the date of filing, which would be  
13   January 5th.

14              MS. NAFASH: Your Honor, may I be heard on that?

15              THE COURT: Yes.

16              MS. NAFASH: Okay. Under the Federal Arbitration  
17   Act, 9 USC 4, a party agrees by the failure to arbitrate  
18   pursuant to an agreement can file a petition and motion to  
19   compel arbitration. The statute requires only five days'  
20   notice in writing to the defaulting party. While service is  
21   made in the manner prescribed by the federal rules, the  
22   summons or waiver thereof is simply -- the result is  
23   different. An application made under the FAA is treated as a  
24   motion. Therefore, the summons or the waiver is simply to  
25   provide the requisite notice.

1           This is an ongoing litigation. For the past seven  
2 months, the parties have been in litigation through notice  
3 letters, mediation, negotiations, and the filing of  
4 arbitrations before the American Arbitration Association.

5           As your Honor may be aware, in addition to the filing  
6 of the waiver, petitioners' counsel included several email  
7 transmissions demonstrating that on October 7th, the same date  
8 of the filing of the petition and motion to compel  
9 arbitration, petitioners' counsel provided Samsung's counsel  
10 with a copy of the petition and the motion along with the  
11 requested waiver of service of process. That was 12 days  
12 prior to this hearing which is seven days more than is  
13 required under the FAA.

14           Further, Samsung's counsel responded on October 13th  
15 agreeing to sign the waiver although also asking for an  
16 extension, which we declined, and that was six days prior to  
17 this hearing. Therefore, under either analysis, Samsung has  
18 been provided with notice more than five days prior to the  
19 hearing on this application.

20           MR. EDWARDS: Your Honor, may I --

21           THE COURT: What is --

22           MR. EDWARDS: May I respond?

23           THE COURT: Let me ask a question. It seems to me  
24 that the parties are on opposite sides where they normally  
25 would be expected to be. It would seem to me that it would be

1 Samsung who would be seeking to require arbitration as opposed  
2 to a class action, and it would be the claimants who would be  
3 seeking to file a class action and avoid arbitration.

4 Why is -- are your positions reversed from what I  
5 would normally anticipate the parties to take? Maybe you can  
6 tell me that.

7 MS. NAFASH: Sure. So interestingly, there is also a  
8 pending class action that was filed against Samsung in, I  
9 believe it was, late 2020 or early 2021. And in that case,  
10 Samsung filed a motion to compel the case to arbitration as it  
11 has in several cases over the past five or six years.

12 When claimants in -- that we represent in our case  
13 pursued claims against Samsung in arbitration and it faced  
14 having to pay extensive fees to arbitrate the claims  
15 individually and, of course, faced the threat of the amount of  
16 damages in this case, it sought to avoid its arbitration  
17 provision, and it refused to pay the fees as well as telling  
18 the court in the pending class action that it was withdrawing  
19 its motion to compel arbitration.

20 THE COURT: I mean, normally claimants would prefer  
21 to have a class action as opposed to arbitration. I mean,  
22 that's what I'm puzzled by, I guess. Maybe Samsung can  
23 explain --

24 MR. EDWARDS: Thank you.

25 THE COURT: -- this.

1 MR. EDWARDS: Yes. Thank you, your Honor. Randall  
2 Edwards again.

3 So the claimants or the petitioners in this case have  
4 purported to file 50,000 individual arbitrations with AAA.  
5 AAA has not -- actually it sent a letter to them on October  
6 12th confirming that it had not yet been accepted by AAA.  
7 Samsung does not believe that the 50,000 individual  
8 arbitrations -- which petitioners have been very clear they do  
9 not intend to provide any streamlining or efficiencies -- are  
10 an appropriate use of the arbitration process. They're not  
11 consistent with the arbitration agreement.

12 There are some threshold procedural and substantive  
13 issues with the motion to compel arbitration as well which we  
14 think need to be completely briefed to be decided but to be  
15 clear, Samsung did not refuse to participate in the  
16 arbitration. Samsung informed both AAA and the petitioners  
17 that they had an objection to paying the fees the way the fees  
18 were sought in the case and that under the AAA rules,  
19 petitioners had a choice either to advance those fees  
20 themselves, and if they are found not to file a frivolous  
21 claim, which will be disputed, could seek to recover them at  
22 the end or they could pursue a case in court.

23 They did neither of those things, and so there are  
24 some significant procedural and substantive problems with the  
25 approach that petitioners have taken.

1           So we believe that the appropriate thing to do here  
2   is to set a briefing schedule to allow all of the issues to be  
3   presented to your Honor with the appropriate authorities that  
4   we can, you know, further elaborate but at the end of the day,  
5   it's quite clear that AAA is the entity, not the Court, that  
6   could make any decisions about the --

7           (Music playing in the background.)

8           THE COURT: Are we back on now?

9           THE CLERK: Yes. I'm not sure what that was.

10          THE COURT: All right. Are the parties still here on  
11   the Samsung case?

12          MR. EDWARDS: Yes, your Honor. Randall Edwards is.

13          MS. NAFASH: We are.

14          THE COURT: What happened -- I was told there was a  
15   class action filed somewhere by the petitioners here.

16          MR. EDWARDS: So, your Honor --

17          MS. NAFASH: Not by petitioners, your Honor.

18          MR. EDWARDS: Your Honor, there are actually two  
19   pending class actions in the Northern District of Illinois,  
20   one of which was referred to by counsel for petitioners.  
21   Neither of those were filed by petitioner, although there are  
22   overlapping purported classes.

23          MS. NAFASH: And, your Honor, just to clarify,  
24   Samsung has a valid and enforceable arbitration provision in  
25   its agreements with all of its customers. We are,



1 petitioners' counsel, exercising their right under the  
2 agreement to pursue their cases in individual arbitration.

3 Samsung unequivocally told AAA, and I quote, "Samsung  
4 will not be paying the business filing fees in connection with  
5 the demand" --

6 THE COURT: Well --

7 MS. NAFASH: -- which is a breach of the contract.

8 THE COURT: There are two class actions in this  
9 court.

10 MR. EDWARDS: So, your Honor -- this is Randall  
11 Edwards again for Samsung. I think what this demonstrates is  
12 that there are some pretty significant disputes, and there  
13 will be some procedural and substantive arguments that need to  
14 be fully fleshed out and presented. And so from our  
15 perspective, the appropriate step is to set a briefing  
16 schedule that allows the -- Samsung to present its authorities  
17 and arguments on that.

18 And with respect to the timing, we don't think that  
19 we should be punished for being cooperative in signing the  
20 waivers of service, that certainly no motion could have been  
21 ruled on before the parties were actually served. And so we  
22 think that the 90-day period that mirrors what Samsung  
23 Electronics Company would have received under that waiver of  
24 service is the appropriate response date for the motion.

25 MS. NAFASH: Respectfully, your Honor, we disagree.

1 This is not complex or complicated. It's very simple.  
2 Samsung has a valid and enforceable agreement to arbitrate.  
3 Petitioners filed their claims before the American Arbitration  
4 Association. Samsung refused to pay its fees. Samsung's  
5 arbitration provision delegates all decisions to the  
6 arbitrator.

7 Therefore, the only decision for this court is  
8 whether or not there is an enforceable agreement to arbitrate  
9 just like in the *McClellan* case. In *McClellan v. Postmates*  
10 which was also pending in the Northern District of Illinois,  
11 Postmates refused to pay its filing fee arguing that the  
12 demands were improperly filed. The Northern District of  
13 Illinois granted the petitioners' motion and required  
14 Postmates to arbitrate because the agreement delegated  
15 exclusive authority to the arbitrator.

16 Here, Samsung's agreement does the same and it says,  
17 I quote, "The arbitrator shall decide all issues of  
18 interpretation and application of the agreement." Therefore,  
19 the only question is whether or not there is a valid and  
20 enforceable agreement to arbitrate which Samsung has told this  
21 court over and over again that there is, in fact, an  
22 enforceable agreement to arbitrate and to compel them to  
23 arbitrate in accordance with their agreement.

24 THE COURT: Let me ask you this. Are there actual  
25 49,988, I guess -- there's eight individual petitioners and

1 then there's 49,980 other individuals. Have all 49,988 filed  
2 applications for arbitration?

3 MS. NAFASH: Yes, your Honor. We filed on behalf of  
4 50,000 claimants. Samsung refused to pay the fees for 49,986.  
5 The 14 claimants for whom they've agreed are now living in  
6 California, and Samsung is concerned about a California  
7 statute that would provide for sanctions if they don't pay the  
8 fees.

9 AAA determined that we had met the filing requirement  
10 and on September 16th, sent an email stating that we had met  
11 the requirements and scheduling a call to discuss the  
12 logistics for moving forward.

13 THE COURT: What are --

14 MS. NAFASH: Thereafter, AAA issued an invoice to  
15 petitioners' counsel in the amount of \$2,525,000 which we paid  
16 on the day it was invoiced. And thereafter, Samsung sent a  
17 letter to AAA telling AAA preemptively that it would not be  
18 paying its fees.

19 MR. EDWARDS: And, your Honor, I'm sorry, just  
20 quickly to respond to that on behalf of Samsung. Randall  
21 Edwards again.

22 That's actually -- we disagree with much of what was  
23 said. In fact, on October 12th, in a letter that petitioners  
24 have not provided to the Court but we would in our opposition,  
25 AAA said that in reviewing the claimants' filing, they had

1 identified that there were inaccurate and incomplete  
2 information.

3 We have serious questions about whether all of those  
4 petitioners are real people and have real arbitration  
5 agreements in addition to everything else, but AAA has not yet  
6 confirmed the filings met all of the requirements. But again,  
7 what I would say is that I'm happy to discuss the merits now.  
8 I believe that we have multiple strong arguments.

9 But I think for purposes of today's hearing, the  
10 appropriate thing to do is to set a briefing schedule so that  
11 we can get this all in front of you in writing and both sides  
12 can have an opportunity to provide their perspectives as to  
13 the motion. We will explain exactly why the motion should be  
14 denied.

15 THE COURT: All right. Let me ask this. Assuming  
16 I'm going to require briefing, do the petitioners wish to  
17 stand on the brief that they filed, or do you -- the motion to  
18 compel which is in the form of a brief, or do you want to --  
19 would you be intending to file something in addition?

20 MS. NAFASH: We would request a reply, your Honor.

21 THE COURT: In other words, you're willing to stand  
22 on this as your opening brief, so to speak.

23 MS. NAFASH: That's correct.

24 THE COURT: All right. I don't see why we need 90  
25 days. I'll give you 45 days to file your response, and then

1 14 days to reply.

2 MR. EDWARDS: Thank you, your Honor.

3 MS. NAFASH: Your Honor, thank you.

4 THE COURT: All right.

5 THE CLERK: The first brief to be filed by December  
6 5th. Reply, December 19th.

7 THE COURT: All right. Let's have a status in  
8 January.

9 THE CLERK: January 25th at 9:00 o'clock a.m.

10 THE COURT: Thank you.

11 MR. EDWARDS: Your Honor, I apologize. Randall  
12 Edwards. I'm actually returning to the country on the 25th.  
13 If it were possible to do it any time --

14 THE COURT: All right.

15 MR. EDWARDS: -- shortly thereafter, I'd really  
16 appreciate it.

17 THE COURT: A week later, Mel.

18 THE CLERK: January 31st at 9:00 o'clock a.m.

19 THE COURT: Thank you.

20 MR. EDWARDS: Thank you, your Honor.

21 (Proceedings adjourned at 9:36 a.m.)  
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C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable HARRY D. LEINENWEBER, one of the judges of said court, at Chicago, Illinois, on October 19, 2022.

/s/ Judith A. Walsh, CSR, RDR, F/CRR October 31, 2022

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division